

SEC. 623. [47 U.S.C. 543] REGULATION OF RATES.

(a) COMPETITION PREFERENCE; LOCAL AND FEDERAL REGULATION.--

(1) IN GENERAL.--No Federal agency or State may regulate the rates for the provision of cable service to the extent provided under this section and section 612. Any franchising authority may regulate the rates for the provision of cable service, or any other communications service provided over a cable system to cable subscribers, but only to the extent provided under this section. No Federal agency, State, or franchising authority may regulate the rates for cable service over a cable system that is owned or operated by a local government or franchising authority within whose jurisdiction the system is located and that is the only cable system located within such jurisdiction.

(2) PREFERENCE FOR COMPETITION.--If the Commission finds that a cable system is subject to effective competition, the rates for the provision of cable service by such system shall not be subject to regulation by the Commission or by a State or franchising authority under this section. If the Commission finds that a cable system is not subject to effective competition--

(A) the rates for the provision of basic cable service shall be subject to regulation by a franchising authority or by the Commission if the Commission exercises jurisdiction pursuant to paragraph (6), in accordance with the regulations prescribed by the Commission under subsection (b); and

(B) the rates for cable programming services shall be subject to regulation by the Commission under subsection (c).

(3) QUALIFICATION OF FRANCHISING AUTHORITY.--A franchising authority that seeks to exercise regulatory jurisdiction permitted under paragraph (2)(A) shall file with the Commission a written certification that--

(A) the franchising authority will adopt and administer regulations with respect to the rates for cable service under this section that are consistent with the regulations prescribed by the Commission under subsection (b); and

(B) the franchising authority has the legal authority to adopt, and the personnel to administer, such regulations; and

(C) procedural laws and regulations applicable to rate regulation proceedings by such authority shall provide a reasonable opportunity for consideration of the views of interested parties.

(4) APPROVAL BY COMMISSION.--A certification filed by a franchising authority under paragraph (3) shall be effective 30 days after the date on which it is filed unless the Commission finds, after notice to the franchising authority of a reasonable opportunity for the authority to comment, that--

(A) the franchising authority has adopted or is administering regulations with respect to the rates for cable service under this section that are not consistent with the regulations prescribed by the Commission under subsection (b);

(B) the franchising authority does not have the legal authority to adopt, or the personnel to administer, such regulations; or

(C) procedural laws and regulations applicable to rate regulation proceedings by such authority shall not provide a reasonable opportunity for consideration of the views of interested parties.

If the Commission disapproves a franchising authority's certification, the Commission shall notify the franchising authority of any revisions or modifications necessary to obtain approval.

(5) REVOCATION OF JURISDICTION.--Upon petition by a cable operator or other interested party, the Commission shall review the regulation of cable system rates by a franchising authority under this subsection. The petition shall be provided to the franchising authority by the person filing the petition. If the Commission finds that a franchising authority has acted inconsistently with the requirements of this subsection, the Commission shall grant appropriate relief. If the Commission, after the franchising authority has had a reasonable opportunity to comment, determines that the State and local laws and regulations are not in conformance with the regulations prescribed by the Commission under subsection (b), the Commission shall revoke the jurisdiction of such authority.

(6) EXERCISE OF JURISDICTION BY COMMISSION.--If the Commission disapproves a franchising authority's certification, the Commission shall exercise jurisdiction over the rates for cable service.

authority's certification under paragraph (4), or revokes such authority's jurisdiction under paragraph (5), the shall exercise the franchising authority's regulatory jurisdiction under paragraph (2)(A) until the franchising qualified to exercise that jurisdiction by filing a new certification that meets the requirements of paragraph (1). Such certification shall be effective upon approval by the Commission. The Commission shall act to approve or disapprove such new certification within 90 days after the date it is filed.

(7) AGGREGATION OF EQUIPMENT COSTS.--

(A) IN GENERAL.--The Commission shall allow cable operators, pursuant to any rules promulgated under subsection (b)(3), to aggregate, on a franchise, system, regional, or company level, their equipment costs into categories, such as converter boxes, regardless of the varying levels of functionality of the equipment within a broad category. Such aggregation shall not be permitted with respect to equipment used by subscribers who are not in the rate regulated basic service tier.

(B) REVISION TO COMMISSION RULES; FORMS.--Within 120 days of the date of enactment of the Telecommunications Act of 1996, the Commission shall issue revisions to the appropriate rules and forms necessary to implement subparagraph (A).

(b) ESTABLISHMENT OF BASIC SERVICE TIER RATE REGULATIONS.--

(1) COMMISSION OBLIGATION TO SUBSCRIBERS.--The Commission shall, by regulation, ensure that rates for the basic service tier are reasonable. Such regulations shall be designed to achieve the goal of protecting subscribers of any cable system that is not subject to effective competition from rates for the basic service tier that are higher than the rates that would be charged for the basic service tier if such cable system were subject to effective competition.

(2) COMMISSION REGULATIONS.--Within 180 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall prescribe, and periodically thereafter revise, regulations to carry out its obligations under paragraph (1). In prescribing such regulations, the Commission--

(A) shall seek to reduce the administrative burdens on subscribers, cable operators, franchisors, and the Commission;

(B) may adopt formulas or other mechanisms and procedures in complying with the requirements of subparagraph (A); and

(C) shall take into account the following factors:

(i) the rates for cable systems, if any, that are subject to effective competition;

(ii) the direct costs (if any) of obtaining, transmitting, and otherwise providing signals to subscribers on the basic service tier, including signals and services carried on the basic service tier pursuant to paragraph (7)(B), and the portion of such costs;

(iii) only such portion of the joint and common costs (if any) of obtaining, transmitting, and providing such signals as is determined, in accordance with regulations prescribed by the Commission, to be properly allocable to the basic service tier, and changes in such costs;

(iv) the revenues (if any) received by a cable operator from advertising from programming carried as part of the basic service tier or from other consideration obtained in connection with the basic service tier;

(v) the reasonably and properly allocable portion of any amount assessed as a franchise fee or charge of any kind imposed by any State or local authority on the transactions between cable operators and cable subscribers or any other fee, tax, or assessment of general applicability imposed by a governmental entity applicable to cable operators or cable subscribers;

(vi) any amount required, in accordance with paragraph (4), to satisfy franchise requirements for the support of public, educational, or governmental channels or the use of such channels or any other services required by a franchise; and

(vii) a reasonable profit, as defined by the Commission consistent with the Commission's policies for cable subscribers under paragraph (1).

(3) EQUIPMENT.--The regulations prescribed by the Commission under this subsection shall include

to establish, on the basis of actual cost, the price or rate for--

(A) installation and lease of the equipment used by subscribers to receive the basic service tier, including a converter box and a remote control unit and, if requested by the subscriber, such addressable converter box and equipment as is required to access programming described in paragraph (8); and

(B) installation and monthly use of connections for additional television receivers.

(4) COSTS OF FRANCHISE REQUIREMENTS.--The regulations prescribed by the Commission under this subsection shall include standards to identify costs attributable to satisfying franchise requirements to support educational, and governmental channels or the use of such channels or any other services required under the

(5) IMPLEMENTATION AND ENFORCEMENT.--The regulations prescribed by the Commission under this subsection shall include additional standards, guidelines, and procedures concerning the implementation and of such regulations, which shall include--

(A) procedures by which cable operators may implement and franchising authorities may enforce the regulations prescribed by the Commission under this subsection;

(B) procedures for the expeditious resolution of disputes between cable operators and franchising authorities concerning the administration of such regulations;

(C) standards and procedures to prevent unreasonable charges for changes in the subscriber's service tier or equipment subject to regulation under this section, which standards shall require that charges for service tier selected shall be based on the cost of such change and shall not exceed nominal amounts when the configuration permits changes in service tier selection to be effected solely by coded entry on a computer terminal or other similarly simple method; and

(D) standards and procedures to assure that subscribers receive notice of the availability of the service tier required under this section.

(6) NOTICE.--The procedures prescribed by the Commission pursuant to paragraph (5)(A) shall require a cable operator to provide 30 days' advance notice to a franchising authority of any increase proposed in the price for the basic service tier.

(7) COMPONENTS OF BASIC TIER SUBJECT TO RATE REGULATION.--

(A) MINIMUM CONTENTS.--Each cable operator of a cable system shall provide its subscribers with a separately available basic service tier to which subscription is required for access to any other tier of service. The basic service tier shall, at a minimum, consist of the following:

(i) All signals carried in fulfillment of the requirements of sections 614 and 615.

(ii) Any public, educational, and governmental access programming required by the franchising authority for the cable system to be provided to subscribers.

(iii) Any signal of any television broadcast station that is provided by the cable operator to its subscriber, except a signal which is secondarily transmitted by a satellite carrier beyond the local service area of the station.

(B) PERMITTED ADDITIONS TO BASIC TIER.--A cable operator may add additional video programming signals or services to the basic service tier. Any such additional signals or services provided to the basic service tier shall be provided to subscribers at rates determined under the regulations prescribed by the Commission under this subsection.

(8) BUY-THROUGH OF OTHER TIERS PROHIBITED.--

(A) PROHIBITION.--A cable operator may not require the subscription to any tier other than the basic service tier required by paragraph (7) as a condition of access to video programming offered on a per channel or per program basis. A cable operator may not discriminate between subscribers to the basic service tier and other tiers with regard to the rates charged for video programming offered on a per channel or per program basis.

(B) EXCEPTION; LIMITATION.--The prohibition in subparagraph (A) shall not apply to a cable operator that, by reason of the lack of addressable converter boxes or other technological limitations, does not permit

offer programming on a per channel or per program basis in the same manner required by subparagraph (A). subparagraph shall not be available to any cable operator after--

(i) the technology utilized by the cable system is modified or improved in a way that eliminates technological limitation; or

(ii) 10 years after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, subject to subparagraph (C).

(C) WAIVER.--If, in any proceeding initiated at the request of any cable operator, the Commission determines that compliance with the requirements of subparagraph (A) would require the cable operator to incur substantial costs, the Commission may, to the extent consistent with the public interest, grant such cable operator a waiver from the requirements for such specified period as the Commission determines reasonable and appropriate.

(c) REGULATION OF UNREASONABLE RATES.--

(1) COMMISSION REGULATIONS.--Within 180 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall, by regulation, establish the following:

(A) criteria prescribed in accordance with paragraph (2) for identifying, in individual cases, rates for cable programming services that are unreasonable;

(B) fair and expeditious procedures for the receipt, consideration, and resolution of complaints filed with the franchising authority (in accordance with paragraph (3)) alleging that a rate for cable programming services charged by a cable operator violates the criteria prescribed under subparagraph (A), which procedures shall include the minimum showing that shall be required for a complaint to obtain Commission consideration and resolution of whether the question is unreasonable; and

(C) the procedures to be used to reduce rates for cable programming services that are determined by the Commission to be unreasonable and to refund such portion of the rates or charges that were paid by subscribers upon filing of the first complaint filed with the franchising authority under paragraph (3) and that are determined to be unreasonable.

(2) FACTORS TO BE CONSIDERED.--In establishing the criteria for determining in individual cases whether rates for cable programming services are unreasonable under paragraph (1)(A), the Commission shall consider the following factors--

(A) the rates for similarly situated cable systems offering comparable cable programming services, taking into account similarities in facilities, regulatory and governmental costs, the number of subscribers, and other factors;

(B) the rates for cable systems, if any, that are subject to effective competition;

(C) the history of the rates for cable programming services of the system, including the relationship of the rates to changes in general consumer prices;

(D) the rates, as a whole, for all the cable programming, cable equipment, and cable services provided by the system, other than programming provided on a per channel or per program basis;

(E) capital and operating costs of the cable system, including the quality and costs of the services provided by the cable system; and

(F) the revenues (if any) received by a cable operator from advertising from programming that is part of the service for which a rate is being established, and changes in such revenues, or from other considerations in connection with the cable programming services concerned.

(3) REVIEW OF RATE CHANGES.--The Commission shall review any complaint submitted by a franchising authority after the date of enactment of the Telecommunications Act of 1996 concerning an increase in rates for cable programming services and issue a final order within 90 days after it receives such a complaint, unless the Commission extends the period for such review. A franchising authority may not file a complaint under this paragraph until 90 days after such increase becomes effective if it receives subscriber complaints.

(4) SUNSET OF UPPER TIER RATE REGULATION.--This subsection shall not apply to cable systems that are subject to the provisions of the Cable Television Consumer Protection and Competition Act of 1992.

services provided after March 31, 1999.

(d) **UNIFORM RATE STRUCTURE REQUIRED.**--A cable operator shall have a rate structure, for the cable service, that is uniform throughout the geographic area in which cable service is provided over its cable subsection does not apply to (1) a cable operator with respect to the provision of cable service over its cable geographic area in which the video programming services offered by the operator in that area are subject to effective competition, or (2) any video programming offered on a per channel or per program basis. Bulk discounts to dwelling units shall not be subject to this subsection, except that a cable operator of a cable system that is not subject to effective competition may not charge predatory prices to a multiple dwelling unit. Upon a prima facie showing by a complainant that there are reasonable grounds to believe that the discounted price is predatory, the cable system shall have the burden of showing that its discounted price is not predatory.

(e) **DISCRIMINATION; SERVICES FOR THE HEARING IMPAIRED.**--Nothing in this title shall be construed to prohibit any Federal agency, State, or a franchising authority from--

(1) prohibiting discrimination among subscribers and potential subscribers to cable service, except that a Federal agency, State, or franchising authority may prohibit a cable operator from offering reasonable discounts to citizens or other economically disadvantaged group discounts; or

(2) requiring and regulating the installation or rental of equipment which facilitates the reception of cable service by hearing impaired individuals.

(f) **NEGATIVE OPTION BILLING PROHIBITED.**--A cable operator shall not charge a subscriber for equipment that the subscriber has not affirmatively requested by name. For purposes of this subsection, a subscriber's failure to refuse a cable operator's proposal to provide such service or equipment shall not be deemed to be a request for such service or equipment.

(g) **COLLECTION OF INFORMATION.**--The Commission shall, by regulation, require cable operators to provide to the Commission or a franchising authority, as appropriate, within one year after the date of enactment of the Television Consumer Protection and Competition Act of 1992 and annually thereafter, such financial information as may be needed for purposes of administering and enforcing this section.

(h) **PREVENTION OF EVASIONS.**--Within 180 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall, by regulation, establish standards, guidelines, and procedures to prevent evasions, including evasions that result from retiering, of the requirements of this section. The Commission shall periodically review and revise such standards, guidelines, and procedures.

(i) **SMALL SYSTEM BURDENS.**--In developing and prescribing regulations pursuant to this section, the Commission shall design such regulations to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers.

(j) **RATE REGULATION AGREEMENTS.**--During the term of an agreement made before July 1, 1992, between a franchising authority and a cable operator providing for the regulation of basic cable service rates, where the agreement provides for effective competition under Commission rules in effect on that date, nothing in this section (or the regulations promulgated thereunder) shall abridge the ability of such franchising authority to regulate rates in accordance with such an agreement.

(k) **REPORTS ON AVERAGE PRICES.**--The Commission shall annually publish statistical reports on rates for basic cable service and other cable programming, and for converter boxes, remote control units, and equipment, of--

(1) cable systems that the Commission has found are subject to effective competition under subsection (d) compared with

(2) cable systems that the Commission has found are not subject to such effective competition.

(l) **DEFINITIONS.**--As used in this section--

(1) The term "effective competition" means that--

(A) fewer than 30 percent of the households in the franchise area subscribe to the cable service over the cable system;

(B) the franchise area is--

(i) served by at least two unaffiliated multichannel video programming distributors each offers comparable video programming to at least 50 percent of the households in the franchise area; and

(ii) the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area;

(C) a multichannel video programming distributor operated by the franchising authority for the franchise area offers video programming to at least 50 percent of the households in that franchise area; or

(D) a local exchange carrier or its affiliate (or any multichannel video programming distributor or facilities of such carrier or its affiliate) offers video programming services directly to subscribers by any means (including direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable programming services in that franchise area, but only if the video programming services so offered in that area are comparable to the video programming services provided by the unaffiliated cable operator in that area.

(2) The term "cable programming service" means any video programming provided over a cable system, regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than (A) video programming carried on the basic service tier, and (B) video programming offered on a per program basis.

(m) SPECIAL RULES FOR SMALL COMPANIES.--

(1) IN GENERAL.--Subsections (a), (b), and (c) do not apply to a small cable operator with respect to

(A) cable programming services, or

(B) a basic service tier that was the only service tier subject to regulation as of December 31, 1991, in any franchise area in which that operator services 50,000 or fewer subscribers.

(2) DEFINITION OF SMALL CABLE OPERATOR.--For purposes of this subsection, the term "small cable operator" means a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of the total number of cable subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.

(n) TREATMENT OF PRIOR YEAR LOSSES.--Notwithstanding any other provision of this section or section 612, losses associated with a cable system (including losses associated with the grant or award of a franchise) incurred prior to September 4, 1992, with respect to a cable system that is owned and operated by the original franchisor of such system shall not be disallowed, in whole or in part, in the determination of whether the rates for any type of equipment that is subject to regulation under this section are lawful.